

UNITED STATES DISTRICT COURT

for the  
Eastern District of Wisconsin

In the Matter of the Search of:

information associated with the Instagram profile with  
URL: [https://www.instagram.com/lilmac\\_gs9/](https://www.instagram.com/lilmac_gs9/), and more  
fully described in attachment A

Case No. 19-982M(CNJ)

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

See Attachment A

located in the Eastern District of Wisconsin, there is now concealed:

See Attachment B

The basis for the search under Fed. R. Crim P. 41(c) is:

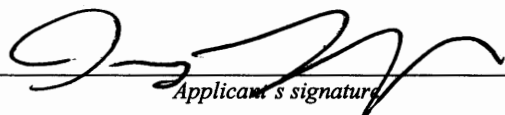
- ☐ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☒ a person to be arrested or a person who is unlawfully restrained.

The search is related to violations of:

Title 18, United States Code, Section 1073

The application is based on these facts: See attached affidavit.

☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

  
Applicant's signature

Jeremy Loesch, Supervisory Deputy  
Printed Name and Title

Sworn to before me and signed in my presence:

Date: November 25, 2019  
2:40 pm

  
Judge's signature

City and State: Milwaukee, Wisconsin

Nancy Joseph, U.S. Magistrate Judge

**AFFIDAVIT IN SUPPORT OF  
AN APPLICATION FOR A SEARCH WARRANT**

I, Jeremy Loesch, being first duly sworn, hereby depose and state as follows:

**Introduction and Agent Background**

I make this affidavit in support of an application for a search warrant for information associated with the URL [https://www.instagram.com/lilmac\\_gs9/](https://www.instagram.com/lilmac_gs9/) (the “**SUBJECT ACCOUNT**”) that is stored at premises owned, maintained, controlled, or operated by Instagram, LLC, (“Instagram”) a social-networking company owned by Facebook, Inc. and headquartered in San Francisco, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), (b)(1)(A), and (c)(1)(A), to require Instagram to disclose to the government records and other information in its possession, including the contents of communications, pertaining to the subscriber or customer associated with the **SUBJECT ACCOUNT**.

1. I am currently employed as a Supervisory Deputy for the U.S. Marshals Service. I have been employed as a law enforcement officer for 16 years. As a part of my duties, I investigate violations of federal and state laws including those relating to fugitives.

2. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other deputies, police officers, agents, and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

3. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, § 1073, have been committed by Demarcus Hayes (Hayes). There is also probable cause to search the

**SUBJECT ACCOUNT** for information described in Attachment A for evidence of these crimes and items to be seized listed in Attachment B.

### **JURISDICTION**

4. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A), & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

### **Probable Cause**

5. On May 13, 2019, a criminal complaint was issued in Milwaukee County Circuit Court, case number 2019CF002053, charging Hayes with (1) one count of 1<sup>st</sup> Degree Recklessly Endangering Safety, contrary to Wis. Stat. § 941.30(1), with a modifier of Use of a Dangerous Weapon, in violation of Wis. Stat. § 939.63(1)(b), and (2) one count of 2<sup>nd</sup> Degree Recklessly Endangering Safety, contrary to Wis. Stat. § 941.30(2), with a modifier of Use of a Dangerous Weapon, in violation of Wis. Stat. § 939.63(1)(b). An arrest warrant (warrant number K00390) and authorization for nationwide extradition were issued the same day. A copy of the criminal complaint and the associated arrest warrant are attached to this affidavit as Exhibit A. The charge of 1<sup>st</sup> Degree Recklessly Endangering Safety is a class F felony punishable by a term of imprisonment not to exceed 12 years and 6 months. The charge of 2<sup>nd</sup> Degree Recklessly Endangering Safety is a class G felony punishable by a term of imprisonment not to exceed 10 years. The modifier charge of Use of a Dangerous Weapon may increase the term of imprisonment for each of the charges not to exceed 5 years.

6. The criminal complaint alleges that, on April 27, 2019, Milwaukee Police Officers responded to Saint Joseph’s Hospital, XXXX W. Burleigh St. Milwaukee, WI,

regarding a person who arrived at the hospital with a gunshot wound to the back. Officers spoke with the victim, identified as "VT," who stated that he was seated inside a vehicle at his mother's residence, XXXX N. 52<sup>nd</sup>. St. Milwaukee, WI. While seated in the vehicle, VT observed Hayes along with his (VT's) ex-girlfriend, identified as "MB," approach the vehicle. Hayes was armed with a black semi-automatic handgun and MB was armed with a golf club. Hayes reportedly yelled at VT to exit the vehicle to which he attempted to drive away. VT reported hearing 4-5 gunshots and shortly after realized that he had received a gunshot wound to his back. Officers reviewed "Ring Doorbell" video recovered from the area of the shooting, which corroborated the victims' statement. Officers recovered fourteen 9mm casings and four flattened bullets from the scene. While conducting a neighborhood canvas, officers observed a bullet hole in the second story of XXXX W. Mill Rd. Milwaukee, WI. The homeowner reported to the officers that he and his three children were home when the shooting occurred and that one of his children was in her bedroom when a bullet entered the home and struck a TV in the bedroom.

7. Following the shooting, the Milwaukee Police Department's Fugitive Apprehension Unit made multiple endeavors to attempt to locate and arrest Hayes at several known family member's homes located in Milwaukee, WI. All efforts were met with negative results.

8. On July 10, 2019, the U.S. Marshals Fugitive Task Force was requested to assist in locating and arresting Hayes. The Milwaukee Police Department reported that they believed that Hayes had fled Wisconsin and may be in Miami, Florida based upon posts made by Hayes to his Facebook.com and Instagram.com pages.

9. On July 12, 2019, Deputy U.S. Marshal (DUSM) Bressers was assigned the fugitive investigation for Hayes.



10. On July 17, 2019, DUSM Bressers conducted an open records search of social media website Facebook.com. DUSM Bressers located a Facebook page under the name Demarcus Hayes with a URL and User ID Number of,

URL: <https://www.facebook.com/lilxhayes>  
User ID Number: 100000494492986

DUSM Bressers reported observing several publicly posted photos of a male on this Facebook page. DUSM Bressers compared the Facebook photos to Hayes' Wisconsin Department of Transportation photo and found them to be the same person. A public posts made by Hayes on his Facebook.com page on July 11, 2019, "FOLLOW ME ON IG @LILMAC\_GS9," directed viewers to "follow" him on his Instagram.com page. DUSM Bressers conducted an open records search of Instagram.com utilizing "lilmac\_gs9" as a search term and located Hayes Instagram page. DUSM Bressers noted observing the same photos of Hayes that were posted to his Facebook.com page also being posted to Hayes' Instagram.com page. DUSM Bressers identified the URL for Hayes' Instagram.com page as [https://www.instagram.com/lilmac\\_gs9/](https://www.instagram.com/lilmac_gs9/).

11. On, July 18, 2019, a search warrant for Hayes' Facebook.com account was signed by the Honorable Glenn H. Yamahiro, Milwaukee County Circuit Court Judge for records and content of the account.

12. On July 29, 2019, a search warrant for Hayes' Instagram.com account was signed by the Honorable David Swanson, Milwaukee County Circuit Court Judge for records and content of the account.

13. On August 14, 2019, a collateral lead (request for assistance) was sent to the Western District of Texas (W/TX) based upon information developed that Hayes was believed to have fled to San Antonio, TX. Investigators with the Lone Star Fugitive Task Force in W/TX conducted an investigation into the whereabouts of Hayes.

14. On August 20, 2019, W/TX reported that Hayes had been residing in San Antonio with MB at XXXXX Huebner Rd. #2407 San Antonio, TX. The managers of the apartment complex identified Hayes from a known picture and identified Hayes as MB's boyfriend. The managers reported that Hayes was no longer residing with MB and moved to New York.

15. Information received from Facebook.com identified a private message conversation between Hayes and screen name "TrapStan SevenFoe." A portion of the conversation occurring from May 5, 2009 from 22:33:17 to 22:35:15 is as follows,

TrapStan SevenFoe: "That wat up"

Demarcus Hayes: "Dude bitch ass really told"

TrapStan SevenFoe: "Smh u still in town or left"

Demarcus Hayes: "I'm in cali"

TrapStan SevenFoe: "Wit tee"

Demarcus Hayes: "Nah we link up next week in New York"

TrapStan SevenFoe: "Aww ok"

16. Information received from Facebook.com identified a private message conversation between Hayes and screen name "Briggs Alexis." On May 14, 2019 at 14:08:01 Hayes posted,

"Cuzin im literally on the run for attempted murder and this bitch took all da money n left me in madison g this hotel finna make me checkout at 11 and ian got not car or no cheese ima literally be outside cuz can u please look out for me I'll pay u back g"

17. On September 30, 2019, a collateral lead was sent to the U.S. Marshals New York/New Jersey Regional Fugitive Task Force (NY/NJRFTF) requesting assistance in locating

and arresting Hayes. As of November 22, 2019, NY/NJRFTF Investigators have been unable to locate and arrest Hayes.

18. Hayes regularly posts publicly on his Facebook and Instagram pages.

19. Hayes last posted on Facebook on November 19, 2019 at 9:14 a.m. Accordingly, I believe that Hayes continues to use his Facebook account while attempting to avoid prosecution in Wisconsin state court.

20. Hayes was last active on Instagram on November 21, 2019. Accordingly, I believe that Hayes continues to use his Instagram account while attempting to avoid prosecution in Wisconsin state court.

21. Since April 27, 2019, Hayes has avoided apprehension and remains at large, despite the Milwaukee Police Department's Fugitive Apprehension Unit and United States Marshals Service's Fugitive Task Force's attempts to locate and arrest him.

22. On November 21, 2019, a criminal complaint and arrest warrant were issued by the Honorable Magistrate Judge Nancy Joseph charging Hayes with a single count of Unlawful Flight to Avoid Prosecution in violation of Title 18, United States Code, Section 1073.

23. From my review of publicly available information provided by Instagram about its service, including Instagram's "Privacy Policy," I am aware of the following about Instagram and about the information collected and retained by Instagram.

24. Instagram owns and operates a free-access social-networking website of the same name that can be accessed at <http://www.instagram.com>. Instagram allows its users to create their own profile pages, which can include a short biography, a photo of themselves, and other information. Users can access Instagram through the Instagram website or by using a special

electronic application (“app”) created by the company that allows users to access the service through a mobile device.

25. Instagram permits users to post photos to their profiles on Instagram and otherwise share photos with others on Instagram, as well as certain other social-media services, including Flickr, Facebook, and Twitter. When posting or sharing a photo on Instagram, a user can add to the photo: a caption; various “tags” that can be used to search for the photo (e.g., a user may add the tag #vw so that people interested in Volkswagen vehicles can search for and find the photo); location information; and other information. A user can also apply a variety of “filters” or other visual effects that modify the look of the posted photos. In addition, Instagram allows users to make comments on posted photos, including photos that the user posts or photos posted by other users of Instagram. Users can also “like” photos.

26. Upon creating an Instagram account, an Instagram user must create a unique Instagram username and an account password. This information is collected and maintained by Instagram.

27. Instagram asks users to provide basic identity and contact information upon registration and also allows users to provide additional identity information for their user profile. This information may include the user’s full name, e-mail addresses, and phone numbers, as well as potentially other personal information provided directly by the user to Instagram. Once an account is created, users may also adjust various privacy and account settings for the account on Instagram. Instagram collects and maintains this information.

28. Instagram allows users to have “friends,” which are other individuals with whom the user can share information without making the information public. Friends on Instagram may come from either contact lists maintained by the user, other third-party social media



websites and information, or searches conducted by the user on Instagram profiles. Instagram collects and maintains this information.

29. Instagram also allows users to “follow” another user, which means that they receive updates about posts made by the other user. Users may also “unfollow” users, that is, stop following them or block the, which prevents the blocked user from following that user.

30. Instagram allow users to post and share various types of user content, including photos, videos, captions, comments, and other materials. Instagram collects and maintains user content that users post to Instagram or share through Instagram.

31. Instagram users may send photos and videos to select individuals or groups via Instagram Direct. Information sent via Instagram Direct does not appear in a user’s feed, search history, or profile.

32. Users on Instagram may also search Instagram for other users or particular types of photos or other content.

33. For each user, Instagram also collects and retains information, called “log file” information, every time a user requests access to Instagram, whether through a web page or through an app. Among the log file information that Instagram’s servers automatically record is the particular web requests, any Internet Protocol (“IP”) address associated with the request, type of browser used, any referring/exit web pages and associated URLs, pages viewed, dates and times of access, and other information.

34. Instagram also collects and maintains “cookies,” which are small text files containing a string of numbers that are placed on a user’s computer or mobile device and that allows Instagram to collect information about how a user uses Instagram. For example,

Instagram uses cookies to help users navigate between pages efficiently, to remember preferences, and to ensure advertisements are relevant to a user's interests.

35. Instagram also collects information on the particular devices used to access Instagram. In particular, Instagram may record "device identifiers," which includes data files and other information that may identify the particular electronic device that was used to access Instagram.

36. Instagram also collects other data associated with user content. For example, Instagram collects any "hashtags" associated with user content (i.e., keywords used), "geotags" that mark the location of a photo and which may include latitude and longitude information, comments on photos, and other information.

37. Instagram also may communicate with the user, by email or otherwise. Instagram collects and maintains copies of communications between Instagram and the user.

38. As explained herein, information stored in connection with an Instagram account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, an Instagram user's account activity, IP log, stored electronic communications, and other data retained by Instagram, can indicate who has used or controlled the Instagram account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, direct messaging logs, shared photos and videos, and captions (and the data associated with the foregoing, such as geo-location, date and time) may be evidence of who used or controlled the Instagram account at a relevant time. Further, Instagram account activity can show how and when the account was

accessed or used. For example, as described herein, Instagram logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Instagram access, use, and events relating to the crime under investigation. Additionally, Instagram builds geo-location into some of its services. Geo-location allows, for example, users to “tag” their location in posts and Instagram “friends” to locate each other. This geographic and timeline information may tend to either inculcate or exculpate the Instagram account owner. Last, Instagram account activity may provide relevant insight into the Instagram account owner’s state of mind as it relates to the offense under investigation. For example, information on the Instagram account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

39. Based on the information above, the computers of Instagram are likely to contain all the material described above with respect to the **SUBJECT ACCOUNT**, including stored electronic communications and information concerning subscribers and their use of Instagram, such as account access information, which would include information such as the IP addresses and devices used to access the account, as well as other account information that might be used to identify the actual user or users of the account at particular times.

**Information To Be Searched And Things To Be Seized**

40. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular Title 18, United States Code, Sections 2703(a), (b)(1)(A), and (c)(1)(A), by using the warrant to require Instagram to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

**Conclusion**

41. Based on the aforementioned factual information, I respectfully submit that there is probable cause to believe that evidence, fruits, and instrumentalities of violations, or attempted violations, of Title 18, United States Code, Section 1073 may be located in the **SUBJECT ACCOUNT** described in Attachment A.

42. Based on the forgoing, I request that the Court issue the proposed search warrant.

43. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant. The government will execute this warrant by serving it on Instagram. Because the warrant will be served on Instagram, who will then compile the requested records at a time convenient to it, there exists reasonable cause to permit the execution of the requested warrant at any time in the day or night.



**ATTACHMENT A**

**Property to Be Searched**

This warrant applies to information associated with the Instagram profile with URL:

**[https://www.instagram.com/lilmac\\_gs9/](https://www.instagram.com/lilmac_gs9/)**

that is stored at premises owned, maintained, controlled, or operated by Instagram, LLC, a company that is owned by Facebook, Inc. and headquartered in Menlo Park, California.

## ATTACHMENT B

### Particular Things to be Seized

#### I. Information to be disclosed by Instagram, LLC

To the extent that the information described in Attachment A is within the possession, custody, or control of Instagram, LLC, including any messages, records, files, logs, or information that have been deleted but are still available to Instagram, LLC, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Instagram, LLC is required to disclose the following information to the government for each account listed in Attachment A:

- a. All identity and contact information, including full name, e-mail address, physical address (including city, state, and zip code), date of birth, phone numbers, gender, hometown, occupation, and other personal identifiers;
- b. All past and current usernames associated with the account;
- c. The dates and times at which the account and profile were created, and the Internet Protocol ("IP") address at the time of sign-up;
- d. All activity logs including IP logs and other documents showing the IP address, date, and time of each login to the account, as well as any other log file information;
- e. All information regarding the particular device or devices used to login to or access the account, including all device identifier information or cookie information, including all information about the particular device or devices used to access the account and the date and time of those accesses;
- f. All data and information associated with the profile page, including photographs, "bios," and profile backgrounds and themes;
- g. All communications or other messages sent or received by the account **from July 29, 2019 to the date of this order**;
- h. All user content created, uploaded, or shared by the account, including any comments made by the account on photographs or other content **from July 29, 2019 to the date of this order**;
- i. All photographs and images in the user gallery for the account **from July 29, 2019 to the date of this order**;
- j. All location data associated with the account, including geotags **from July 29, 2019 to the date of this order**;

- k. All data and information that has been deleted by the user **from July 29, 2019 to the date of this order**;
- l. A list of all of the people that the user follows on Instagram and all people who are following the user (*i.e.*, the user's "following" list and "followers" list), as well as any friends of the user;
- m. A list of all users that the account has "unfollowed" or blocked;
- n. All privacy and account settings;
- o. All records of Instagram searches performed by the account, including all past searches saved by the account **from July 29, 2019 to the date of this order**;
- p. All information about connections between the account and third-party websites and applications; and,
- q. All records pertaining to communications between Instagram, LLC and any person regarding the user or the user's Instagram account, including contacts with support services, and all records of actions taken, including suspensions of the account.

Instagram is hereby ordered to disclose the above information to the government no later than 14 days of issuance of this warrant.

## **II. Information to be seized by the government**

All information described above in Section I that constitutes fruits, evidence and instrumentalities of violations of 18 U.S.C. Section 1073 involving Demarcus Hayes including, for each username identified on Attachment A, information pertaining to the following matters:

- (a) The whereabouts, movement, schedule, and location pertinent to fugitive status;
- (b) Any alias;
- (c) Evidence indicating how and when the Instagram account was accessed or used, to determine the chronological and geographic context of account access, use, and events relating to the crime under investigation and to the Instagram account owner;

- (d) Evidence indicating the Instagram account owner's state of mind as it relates to the crime under investigation;
- (e) The identity of the person(s) who created or used the user ID, including records that help reveal the whereabouts of such person(s).
- (f) The identity of the person(s) who communicated with the user ID about matters relating to Hayes' location, including records that help reveal their whereabouts.



**CERTIFICATE OF AUTHENTICITY OF DOMESTIC  
RECORDS PURSUANT TO FEDERAL RULES OF  
EVIDENCE 902(11) AND 902(13)**

I, \_\_\_\_\_, attest, under penalties of perjury by the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this certification is true and correct. I am employed by Instagram, LLC, and my title is \_\_\_\_\_ . I am qualified to authenticate the records attached hereto because I am familiar with how the records were created, managed, stored, and retrieved. I state that the records attached hereto are true duplicates of the original records in the custody of Instagram, LLC. The attached records consist of \_\_\_\_\_ [GENERALLY DESCRIBE RECORDS (pages/CDs/megabytes)]. I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth by, or from information transmitted by, a person with knowledge of those matters, they were kept in the ordinary course of the regularly conducted business activity of Instagram, LLC, and they were made by Instagram, LLC as a regular practice; and

b. such records were generated by Instagram, LLC's electronic process or system that produces an accurate result, to wit:

1. the records were copied from electronic device(s), storage medium(s), or file(s) in the custody of Instagram, LLC in a manner to ensure that they are true duplicates of the original records; and

2. the process or system is regularly verified by Instagram, LLC, and at all times pertinent to the records certified here the process and system functioned properly and normally.

I further state that this certification is intended to satisfy Rules 902(11) and 902(13) of the Federal Rules of Evidence.

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Date

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Signature